

Notice of Allowability

Application No.

10/600,642

Examiner

Juliet C. Switzer

Applicant(s)

MOTOYAMA ET AL.

Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to election 6/15/06 and interview 8/22/06.
2. ☒ The allowed claim(s) is/are 1-7.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/762,633.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 6/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20060828.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.

Continuation of Attachment(s) 9. Other: Attachement to interview summary that is copy of fax sent 8/22/06.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne Kornbau on 8/25/06.

2. The restriction requirement mailed 3/3/06 is WITHDRAWN.

The application has been amended as follows:

Please cancel claims 8 and 9.

Please replace claims 1-7 with the following claims:

1. An isolated nucleic acid comprising SEQ ID NO: 1.
2. An isolated nucleic acid comprising SEQ ID NO: 2.
3. An isolated nucleic acid comprising SEQ ID NO: 5 or SEQ ID NO: 6.
4. A method for detecting *Pectinatus frisingensis* comprising carrying out a gene amplification assay wherein a nucleic acid comprising instant SEQ ID NO: 1 is produced, and detecting the presence of the amplification product, wherein the presence of SEQ ID NO: 1 is indicative of the presence of *Pectinatus frisingensis*.
5. A method for detecting *Pectinatus frisingensis* comprising carrying out a gene amplification assay wherein a nucleic acid comprising instant SEQ ID NO: 2 is produced, and detecting the presence of the amplification product, wherein the presence of SEQ ID NO: 2 is indicative of the presence of *Pectinatus frisingensis*.

Art Unit: 1634

6. A method for detecting *Pectinatus frisingensis* comprising carrying out a gene amplification assay wherein SEQ ID NO: 5 or SEQ ID NO: 6 is used as a primer in conjunction with a primer sequence which hybridizes to the *Pectinatus frisingensis* 16S rRNA gene, and detecting the presence of an amplification product, wherein the presence of an amplification product is indicative of the presence of *Pectinatus frisingensis*.

7. A method according to claim 6 wherein the primer sequence which hybridizes to the *Pectinatus frisingensis* 16S rRNA gene is SEQ ID NO: 10.

3. The following is an examiner's statement of reasons for allowance:

The prior art does not teach or suggest an isolated nucleic acid comprising instant SEQ ID NO: 1 or SEQ ID NO: 2. These molecules comprise the 16S-23S spacer region from *Pectinatus frisingensis*, and are useful for detection of this microorganism in samples. This microorganism is a known contaminant within the brewing process. Instant SEQ ID NO: 5 and 6 are both fragments of both of SEQ ID NO: 1 and SEQ ID NO: 2, and would likewise be useful for the detection of *P. frisingensis*.

The prior art of Sakamoto (US 5869642) is the closest prior art, and teaches the an isolated nucleic acid comprising the gene encoding 16S ribosomal RNA gene of the genus *Pectinatus* and the detection of *Pectinatus* using this sequence. Instant SEQ ID NO: 10 is within the 16S gene, and Sakamoto teaches a primer which is the complement of SEQ ID NO: 10, namely their SEQ ID NO: 8. Though Sakamoto teaches detection of the *Pectinatus* genus using the 16S gene, they do not provide the sequence of the 16S-23S spacer region, and more

Art Unit: 1634

particularly, they do not provide instant SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 5 or SEQ ID NO: 6, one of which is specifically recited in each of the allowed claims.

Thus, the claims are free of the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliet C Switzer whose telephone number is (571) 272-0753. The examiner can normally be reached on Monday, Tuesday, or Thursday, from 9:00 AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached by calling (571) 272-0735.

The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-0507.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is

Art Unit: 1634

(866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.



Juliet C. Switzer
Primary Examiner
Art Unit 1634

August 28, 2006